Appendix A

"CONGRESS AND WATER RESOURCES"

Article reprinted from American Political Science Review 44, no. 3 (September 1950): 576-593.

CONGRESS AND WATER RESOURCES*

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Should Twitch Cove, Maryland, be improved at Federal expense for the protection of the few crabbers who live near this Eastern Shore community? This past May, Congress decided yes; they confirmed a recommendation of the Chief of Engineers, U. S. Army. The United States Engineer Department, as the Corps of Engineers is called in the exercise of civil functions, recommended in favor of Twitch Cove after evaluating alternative plans of improvement and selecting that one which appeared to balance best the factors of "economic feasibility"- --i.e., the ratio of benefits to costs, "engineering feasibility," and the "desires of local interests."

This last item is of interest for the moment. For any major improvement, even for Twitch Cove, there will be many groups of "local interests," and their

*** Documentation for parts of this paper is to be found in the author's *Water Resources Devvelopment* (unpublished manuscript, 1949, Harvard University). This work will be published by the Harvard University Press in the near future. Sources are consequently cited in notes only where important documentation is not to** be **found in the manuscript.**

"desires" will differ, may even conflict. Thus, the Engineers seek to adjust these interests and to come up with a recommendation that will maximize the total desires of the community.

Congress for a great number of years has followed a procedure of legislative self-restraint with respect to water resources developments. It will not authorize any improvement which has not received a favorable report from the Chief of Engineers. And since the Engineers attempt to maximize local desires, it may be said that Congress has transferred important responsibility for the adjustment of group interests from its own body to the U. S. Engineer Department, an executive agency.

The Engineers have recognized the nature of the responsibility which Congress has delegated to them. They have conducted their organization. and operations in a manner designed to allow a rather full articulation of local group interests. The project planning procedure, from the time Congress authorizes the Corps to undertake an examination of a given area, involves twenty distinct stages at which group interests are able to present their views to the Corps. At three of these twenty, public hearings are regularly provided for; at two additional stages, Engineer Department instructions require consultation with local interests; and at the remaining fifteen, the extent of consultation varies with particular circumstances;' but the necessity of a constant awareness of the current attitudes of local interests is emphasized in all Engineer Department publications.

Recently, the Chief of Engineers said:

The authorization of a river and harbor or flood control project follows a definitely prescribed, democratic course of action. It is based upon the activation of the desires of local interests, who are most vitally interested. Local interests, as individuals or groups through the actions of their representatives in Congress, make request for an item to be included in a rivers and harbors or flood control bill (i.e., authorization to conduct an examination) .... The District Engineer, mindful of the need for developing all public opinion, holds an open public hearing at which not only those interests that are active in obtaining the authorization of the proposed work but also all other views are obtained and encouraged. Having thus developed the desires of the local citizens, the District Engineer makes a study ....

I. PRESENT ARRANGEMENTS AND TEE LEGISLATIVE PROCESS**

Several important consequences for the legislative process flow from this project planning procedure. These include the participation by members of

**** Arrangements relating to Congress, the Corps of Engineers, and the President are discussed. No effort is made to deal in any detail with the relations of Congress and the Bureau of Reclamation because of space limitations and the fact that Corps arrangements constitute the more controlling factors in legislation for water resources. This has become more the case in the last few years. Where the Bureau and the Corps have been in competition since 1936, the Secretary of Interior has sought support of the President's office to offset support which the Corps has gotten from Congress. But even with the President's support, the Secretary has not had great success in getting his programs adopted. As a result, the Bureau of Reclamation and its supporters in Congress, the Western irrigation bloc, have begun to use the same legislative techniques which have meant**

Congress in the "executive" planning process; legislation by committee resolution; service by the Corps of Engineers as consultants to, and contractors for, the Congress, certain congressional committees, and individual members of Congress; by-passing of the President and friction among executive agencies; and the interlocking of pressure groups, the Corps, and members of Congress.

Though Congress as a group has largelydisassociated itself from the process of project planning by transferring responsibility for adjustment of group interests to the Engineer Department, individual members of Congress have not been so abstentious. Representatives and Senators, knowing they cannot obtain congressional authorization for the projects they are sponsoring without a favorable report from the Engineers, have attempted to pressure them into approving these projects by appealing to District Engineers and to the Board of Engineers for Rivers and Harbors in Washington in public hearings.

The following quotations from members of Congress indicate the importance which the legislators attach to their appearances at Engineer Department hearings :

Rep. Dockweiler (Calif.). I have appeared before the Board of Army Engineers in behalf of a harbor in my district and I made what I thought was a pretty good case for improvement of Santa Monica Harbor .... And I think the conclusion of the Board of Army Engineers was that no work should be done there because there was not enough business there. ...

Of course we must abide by the decision of somebody, and the Army Engineers decided against me in that case.

Rep. Harris (Ark.). Mr. Speaker, the Army Engineers, of the Vicksburg district, who are doing a fine work in that area (tic), held a public meeting at Hot Springs, Ark., Friday, December 12, investigating the construction by the Federal Government of Blakely Mountain Dam and Reservoir, on the Ouachita River. I had accepted their invitation to appear before the engineers at that meeting, but, due to the emergency and declaration of war, I did not have the privilege. My remarks, however, were read for me and I insert them here in the Record.

Colonel Sturgis and gentlemen, on behalf of the people of the Seventh District of Arkansas, I am glad to appear before you in the interest of the construction of the Blakely Mountain Dam and Reservoir for flood control and power development. Needless to say the greater part of the Ouachita River in Arkansas runs through my district, affecting directly 8 of the 11 counties. ...

I wish to express my appreciation and the appreciation of the people throughout this whole area for the fine work the Army engineers are doing in the development of these projects for flood control and power facilities as well. The people are intensely interested and not only asking but pleading for this protection and development. ...

If the Engineers submit an unfavorable or partially favorable report, the proponents of a project seek a reexamination, for the Congress will, as noted, not authorize an improvement without a favorable Corps recommendation. At the same time, the Corps by law may not initiate a survey unless Congress hasspe-

such "success" for the Engineers. Adoption of these techniques has been limited, however, by the fact that support of the reclamation program of the Bureau is restricted in Congress to the Western bloc; whereas support of the navigation and flood control programs of the Corps is found in representatives from all areas.

cifically authorized it, usually in an omnibus rivers and harbors or flood control bill. However, to make it easier for members of Congress to require the Engineers to reexamine unfavorable reports in the hope that "changed conditions" may justify a favorable recommendation, the Congress has devised a truly unique procedure amounting to legislation by committee resolution.

After a report of the Chief of Engineers is one year old, any Representative or Senator may present a resolution to the appropriate congressional committee[1] which, if adopted by the committee, requires the "Board of Engineers for rivers and harbors ... to review the report with a view to determining whether any modification should be made at this time in the recommendation heretofore made." The committee resolution has the effect of law, and, it should be noted, is not subject to presidential veto.

Review resolutions have been quite common. As the Congressmen proposing the reviews enjoy no opposition to their requests in most cases,and as the Engineer Department has not been called upon often to report on the desirability of conducting reviews, the committees have been disposed to grant the requests, on occasion disregarding even the one-year waiting period. It is physically impossible for any one member of a committee to be informed on the history of all navigation and flood control projects. The Representative from Arkansas, for example, in all probability never heard of Mill Creek, Virginia, to say nothing of having any judgment as to whether or not the Engineers should be asked to review the report on this Creek; he will vote, Yes. Of 83 investigations completed by the Corps in fiscal year 1946, 20 were authorized by regular legislation and 63 were reexaminations submitted in response to committee resolutions.

The new House Committee on Public Works in 1947 resolved to cut down on this indiscriminate use of legislation by committee resolution. It adopted a rule extending the waiting period to three years and requiring the Chief of Engineers to report on the estimated costs of conducting the proposed reviews. The Senate Committee failed to follow suit.

It is difficult to evaluate the review resolution as a technique for pressuring the Corps to give its approval to the projects which the members of Congress desire. Available data, however, are rather impressive in showing the importance of the resolution in getting water projects approved, expanded in scope, or modified in terms of reducing the local contributions required.

The Congress, in its long history of legislating internal improvements, has developed close relations with the Corps. (The Corps was the engineering department of the Government which planned and executed the national internal improvement programs of the 1820's Congress considers the Corps to be *directly* responsible to it. By resolution Congress directs the Board of Engineers for Rivers and Harbors, an advisory board to the Chief of Engineers, to conduct reviews of surveys. It does not direct the chief executive officer,

1. In the House, Committees on Rivers and Harbors or on Flood Control prior to 80th Congress; now Committee on Public Works. In the Senate, Committee on Commerce prior to 80th Congress; now Committee on Public Works.

the President; nor does it even provide the President with an opportunity for veto.

The Corps concurs heartily in this relationship. The Engineers call themselves "the engineer consultants to, and contractors for, the Congress of the United States." The theoretical consequences of such a direct legislative-agency relationship are familiar to students of government and administration; they need not be repeated here.[2]

As might be expected, Congress as a whole is not equipped to exercise direct responsibility over the conduct of Engineer Corps civil functions. It is rather certain congressional committees--those with competence over navigation and flood control matters--that attempt to hold the Corps accountable. It is to them that the Engineers are directly responsible. Witness the review resolution procedure in which Congress in effect allows a committee to legislate for it.

Traditionally members of Congress from the Mississippi delta area, where flood protection, drainage, and river navigation problems assume great importance, seek positions on the committees which handle Corps legislation. Through regular re-election they attain positions of seniority. Will M. Whittington of Mississippi, chairman of the House Committee on Public Works, was for years prior to the establishment of this committee chairman of the Committee on Flood Control. Judge Whittington, a hard hitting committee chairman, has always had Corps legislation closely under his control. More than anyone in the executive or legislative establishments, he is in close contact with, and almost in a position of supervision over, the Chief of Engineers and the USED. Until his recent death, John Overton of Louisiana was number one man in the Senate on navigation and flood control legislation.

Direct relations between these committees of Congress and the Corps have developed into a close identity of interests between the two. The Committees on Public Works feel a proprietary interest in the Corps of Engineers and in the direct relations which prevail. In terms of policies for the development of resources, the important consequences of this will be stated later.

In some respects the Engineer Department is more nearly responsible to individual members of Congress directly than to Congress as a whole or to certain congressional committees. It is the member of Congress who initiates the legislative proposal for survey; he is first contacted by the District Engineer to determine the scope of the desired improvement and interested parties; he is first to be informed of any change in the status of the investigation. The nature of the authorization process--the enactment of omnibus rivers and harbors and flood control bills---is such as further to encourage direct responsibility to individual Congressmen. When hearings are held by congressional committees on favorably reported projects to be included in omnibus bills, the testimony of the member of Congress from the district in which the project is located is usually corroborated and supplemented by the Army Engineer present at the

2. A recent restatement of the major issues by Laurence I. Radway and this author can be found in "Gauging Administrative Responsibility," *Public Administration Review*, Vol. 9, pp. 182-193 (1949).

hearing. All of these techniques have led to a sense of direct responsibility on the part of the Engineer Department to the individual member of Congress.

Direct relations between Congress and the Corps mean, of course, that the Engineers by-pass the President. This is obviously bad, for the only place where related executive functions can be coordinated effectively is in the President's office. Prior to the 1930's there was no major problem as most river improvements were for single purposes and did not impinge directly on the activities of other agencies. In the early '30's, however, the Corps began planning multiple purpose projects throughout the country involving flood control, power, irrigation, drainage, and other uses, and coordination in order to produce the best multiple purpose plan for the development of major drainage basins seemed essential. The history of resources legislation and of the development of planning procedures between 1934 and this date constitutes very largely the history of efforts by Presidents Roosevelt and Truman to break down direct agency responsibility to the Congress and to substitute for it a pattern of responsibility to the Chief Executive. Only in these terms can recent developments in the resources field be interpreted.

The agency with which the Corps has had greatest friction due to lack of coordination is the Bureau of Reclamation in the Department of the Interior. In this inter-agency feud, which has been really intense since 1939, the Corps, for reasons already indicated, has enjoyed the strong support of the Congress. The Secretary of the Interior and the Bureau of Reclamation, on the other hand, have received less consistent congressional support and have sought to balance the advantage of the Corps of Engineers in this respect by obtaining the support of the President and his Executive Office. The general pattern may be expressed as follows : Corps of Engineers+Congress v. Secretary of the Interior + Executive Office of the President.

The fact that Congress as a body has transferred to the Engineers responsibility for adjusting group interests in proposing water developments, but that individual members of Congress continue to take an active part in the planning and adjusting process is revealed in an interesting manner by the national water pressure groups-particularly the National Rivers and Harbors Congress. This comprehensive lobby counts in its membership the "local interests" (state and local officials, local industrial and trade organizations, contractors), the U. S. Congress (Representatives and Senators are honorary members), and the Corps of Engineers (officers of the Corps engaged in rivers and harbors work are all ex-officio members). The members of Congress, though they are in a real sense the lobbied, take a very active part in the Rivers Congress. Today, for example, the President is Senator John McClellan of Arkansas, a member of the Public Works Committee and of the sub-committee of theCommittee on Appropriations which handles Engineer Corps funds, and chairman of the Committee on Expenditures in the Executive Departments-to which the Hoover Commission recommendations proposing reorganization of the Corps of Engineers have been referred. McClellan, as a member of the Hoover Commission, dissented from those recommendations which would divest the Army

of rivers and harbors functions. The national vice presidents of the pressure group are Senator Wherry of Nebraska, Republican floor leader and a member of the Appropriations sub-committee on Engineer Corps funds; Representative Whittington of Mississippi, identified earlier; and Representative Case of South Dakota, a member of the Committee or Appropriations and, at the time of his selection as vice president, of the subcommittee which considered appropriations for the Corps.

In the past the ex-officio members, officers of the Corps, also have taken part in the proceedings of the lobby, though today they are somewhat more circumspect. The Rivers Congress remains, however, the most active pressure group in support of the USED.

Perhaps the most interesting and important aspect of the Rivers and Harbors Congress is the work of the Projects Committee. When the National Congress was formed in 1901, its slogan was "a policy, not a project." The purpose was not to urge any specific waterway improvements but to interest the public and the Federal Congress in the development of waterways in general. In 1935, however, the Rivers and Harbors Congress reversed its policy, agreed to promote certain waterway improvements actively, and for that purpose organized a Projects Committee. The Committee meets once a year for several days preceding the annual convention to act upon all applications for endorsement. It holds hearings on each project, classifies it in one of several orders of priority, and presents its recommendations to the full Rivers and Harbors Congress for adoption.

Senators and Congressmen who are sponsoring waterway improvements in their districts appear before the Committee in order to obtain from that organization of which they are honorary members favorable recommendations for their projects. The following excerpts, in the April, 1940, issue of the ***National Rivers and Harbors News,*** are from a report of the annual meeting of the Projects Committee:

Congressman Joe Hendricks of Florida presented testimony on. the Cape Canaveral Harbor, which he stated will serve the $5,000,000 citrus fruit belt, which is now without proper harbor facilities.

Congressman John Jennings, Jr. of Tennessee, urged approval of the project for the construction of dams in the vicinity of Oakdale and Harriman, Tennessee.

Representative Edith Nourse Rogers, of Massachusetts, asked approval of the Merrimac River project. The project will help protect the city of Lowell, Massachusetts from disastrous floods, as well as the rest of that area, she said.

It is difficult to place a value on the general effectiveness of the Rivers and Harbors Congress because of the fact that it serves as a clearing house for uniting and coordinating the activities of local and sectional interests. The Congress itself puts forth bold claims as to its influence:

The influence of the National Rivers and Harbors Congress has been perhaps a more controlling force on legislation approved than that of any other organization .... Thus far there has been no adverse criticism of any of the recommendations made by the Congress in its resolutions and reports, and virtually every bill passed by the federal Congress for the improvement of harbors and waterways has been composed almost in toto of proj-

e&s previously investigated and recommended by the National Rivers and Harbors Congress.

The [Rivers and Harbors] Congress is the country's oldest and largest water organization and occupies *semi-official status* by reason of its close liaison with the governmental agencies, legislative and executive, responsible for public works. ...

Though the group may be correct in making these claims, we shall be content to accredit it with being certainly one of the most effective lobbies in Washington today.

II. THE NEGLECT OF WATER RESOURCE PLANNING

To this point we have considered consequences for the legislative process of the manner in which interests are adjusted in the planning of water projects More fundamental, however, are the effects of these consequences in terms of best development of the nation's natural resources. The planning process has produced two important results: an absence of national plans and policies for water resources and an absence of executive branch arrangements that might develop such plans and policies.

Water planning to date has been characterized by continued emphasis on the localized aspects of individual water projects. This emphasis begins with the requirement that all surveys be authorized by Congress. The members of Congress who propose survey items for inclusion in omnibus navigation and flood control bills usually do so in response to requests of local interests in their districts. These interests often have not the ability to visualize the relationship of the improvements they desire to multiple purpose basin-wide development.

This local emphasis is accentuated by the Corps of Engineers. It seeks to limit the scope of investigations to what was intended by the Congressmen responsible for the particular authorizations. Further, the survey procedure of the Engineer Department is so oriented that each individual water development project is considered almost exclusively in the light of benefits to be derived by the area immediately adjacent to the improvement. This is most often what the local interests desire. Thus, for example, if the benefits from dredging a harbor channel to permit entrance of deeper draft vessels into an east coast Florida port are measured in terms of additional traffic and business for the localized port area, the project will be easier to justify economically than if the benefits were measured in terms of the general effects of the new project on all east coast ports in the vicinity; some of these ports might lose traffic to the newly developed one.

Finally, the procedure for authorizing improvements, the omnibus rivers and harbors and flood control bills, emphasizes individual projects-the pork barrel. Representatives and Senators appear before the appropriate congressional committees, seeking committee approval for projects in their districts which have received favorable Engineer Corps reports. At hearings on the omnibus rivers and harbor bill of 1949, 54 Representatives and Senators from 24 states testified or submitted statements to Representative Whittington's committee; on the flood control bill of the same year, 62 Congressmen from 25 states appeared.

It is not meant to say that there has been no basin-wide planning on the part of Congress and the Corps. In recent years there has been some improvement in this respect, especially for western river basins. But here the broader view on the part of the Corps is inspired primarily by competition with the Bureau of Reclamation, which has traditionally used the multiple purpose basin-wide approach. Concerning waterways legislation, President Truman said to Congress in May, 1950;

Finally, I urge the Congress to develop more satisfactory procedures for considering and authorizing basin-wide development programs. We are a long way still, both in the executive and legislative branches, from the kind of comprehensive planning and action that is required if we are to conserve, develop and use our natural resources so that they will be increasingly useful as the years go by. We need to make sure that each legislative authorization, and each administrative action, takes us toward--and not away from this goal.[3]

Today we have no rational national water policy, even apart from the unrelated consideration of individual projects. President Truman recognized this in January, 1950, when he set up a temporary Water Resources Policy Commission under Morris L. Cooke to develop one.[4] Why is this true? Why are we spending hundreds of millions of dollars each year on water developments without a plan?

That ultimate responsibility rests with Congress, there can be no question. But Congress and congressional committees are not equipped to develop a national water plan out of whole cloth. They are admirably equipped to examine, approve, disapprove, and amend any intelligent programs presented to them which focus on the great issues. It is the Chief Executive who is best able to prepare such broad programs and assume responsibility for placing them before the elective body. For the greatest part of water development, however, the President has been short circuited. The Congress and the Engineers work together, but, as related, this combined labor has produced no plan.

The Corps of Engineers in reporting to Congress makes no special effort to point up the broad policy questions or to recommend or encourage the enactment of laws containing a careful definition of national policy in the water field. As the "Engineer consultants to and contractors for the Congress of the United States," they have, they say, no responsibility for initiating policies and broad programs; that is the function of Congress.

The following statement of Secretary of War Henry Stimson, in 1919, illustrates what we would put today into a broader framework:

When I was Secretary of War I found this situation, and I found that the reports of the Chief of Engineers which came to me were not "Is this an improvement which should be made in view of our particular funds this year--our particular budget this year--and in view of all the improvements in the United States taken at the same time?" but simply and solely "Is this an improvement of a waterway which should be made?" And the Chief of Engineers said he was directed by Congress to report in that way, and this was the way

[3] **Message to Congress in approving H.R. 5472, the rivers and harbors bill. Printed in *New York Times*, May 23, 1950.**

[4] **White House Press Release of January 3, 1950.**

he was going to interpret that, not in comparison with other projects, but simply whether in the millennium it would be a good thing for the country to have that waterway improved. When I said "That does not suit me at all. You come in here with a lot of propositions which you have approved, and you want me to approve, to improve the navigation of such and such a river and such and such a creek and such and such a harbor. I want to know how does that compare with the situation of the whole?" He said, "I have nothing to do with that. I cannot have anything to do with it. Congress will not listen to me on that. They reserve the judgment to do that themselves."

President Roosevelt tried hard to fulfill what he considered his duty-to develop a national water policy and to submit this to Congress for action. He created and supported the National Resources Planning Board and its Water Resources Committee. But in this position the President enjoyed the intense opposition of the Congress and of the Corps of Engineers. The Corps failed to give full and genuine cooperation to the Water Resources Committee in its efforts to develop a policy. It dissented from most policy reports of the Committee, most notably from the important 1941 Report on National Water Policy. The Congress was always unsympathetic to the NRPB; refused, despite frequent personal appeals from the President, to give the Board permanent statutory status; and finally abolished it by denying appropriations in 1943. The single most important reason for congressional opposition to the Board was probably resentment on the part of the so-called rivers and harbors bloc in Congress to any effort by the President to interfere with the direct relations between Congress and the Corps. Furthermore, Congress failed to pay any heed to the policy recommendations of the Water Resources Committee which, though they contained dissents from the Corps, were supported by the President.

Herein lies a lesson for the new Water Resources Policy Commission. The acceptance of its recommendations may turn on the support they can get from the Corps and the congressional Committees on Public Works. The members of the Commission seem well aware of this.

III. CONGRESS AND EXECUTIVE BRANCH ORGANIZATION

The fact that organization for water resources development is so inadequate today is in large part a result of the congressional attitudes we have outlined.

Theodore Roosevelt, Herbert Hoover, Franklin Roosevelt-all have tried to bring rationale into administration of water functions. And all have failed, failed because Congress will brook no interference whatsoever in its direct relations with the Corps. As one writer has said, "The civil functions of the Army Corps of Engineers constitute a veritable Rock of Gibraltar against all executive attempts to introduce any organizational integration of flood control and river development with the land use, irrigation, and electric-power activities of other federal agencies."

In recent years the Bureau of the Budget, as a coordinating agency for the President, has tried to break into the direct channel between the Corps and Congress. It has required that survey reports (in the same manner as proposed legislation) be submitted to the Executive Office of the President, prior to sub-

mission to Congress, so that the Corps can be informed of the relationship of the reports to the program of the President. But when the Executive Office informs the Corps that a project does not conform with the President's program, the Engineers pay no heed. They recommend to Congress, nonetheless, that the project be adopted.

The Budget Bureau is the source of statistics to back up this conclusion.[5] Between January, 1941, and September, 1948, the Corps of Engineers submitted to the Budget Bureau 436 reports favorable to construction of federal improvements. Three hundred and sixty were cleared with no objections to the authorization of the projects, and 76 were (a) held by the Bureau to be wholly or partially not in accord with the President's program (44 reports) or (b) were the subject of specific reservations stated in special comments by the Bureau (32 reports).

With regard to the 44 reports held not in accord with the President's program, the Corps of Engineers transmitted reports on all of these projects to Congress with favorable recommendations. Congress authorized 38. Of the total of 76 projects on which the Bureau made some reservations and comments, Congress authorized 62; seven were either abandoned, or considered by Congress and rejected, while seven projects had not yet been formally considered by Congress. The projects authorized by Congress upon which the Bureau had expressed reservations or full opposition had a total estimated cost in 1947 of $2 billion; those not authorized by Congress, a cost of about $500 million.

Senator Douglas' recent publicized effort to reduce by $840 million the authorizations contained in the 1950 rivers and harbors and flood control bill provides another illustration. Most all of the projects which Douglas attacked had been given low priority or held not in accord by the Bureau of the Budget. Yet the Senate, like the Senate and House Committees on Public Works and the House of Representatives before it, adopted the recommendations of the Chief of Engineers and disregarded those of the President.

Under the present planning pattern, the water experts of all agencies of the Federal government do not cooperate to prepare reports on the best uses of water in any drainage basin. Rather the Corps of Engineers (or the Bureau of Reclamation, as the case may be) undertakes a survey for which it assumes sole responsibility. It may or may not call in experts of other agencies during the conduct of the survey. When the report has been completed and tentative recommendations announced to the local interests, then the report is referred to other agencies for comment; but experience has proved that clearance occurs too late in the planning process for effective coordination.

This pattern of uncoordinated planning was set by Congress in enacting the first two national flood control bills in 1936 and 1938. Although it was known, certainly by 1938, that the President, the National Resources Planning Board, the Budget Bureau, and the Agriculture and Interior Departments all preferred

[5] Commission on Organization of the Executive Branch of the Government, *Task Force Report on Natural Resources* (Washington, 1949), Appendix 5.

provisions for genuinely cooperative planning, Congress preferred to assign the **planning** responsibility directly to the Corps, not to the executive branch as a whole through the person of the President.

The NRPB recommended that the President veto each of these bills for this failure, among other reasons. The President approved them, but in each instance stated his opposition to the uncoordinated planning provided and his determination to alter this within the executive branch. He said in 1938:

I have approved this bill with some reluctance. ...

It is not a step in the right direction in the setup provided for general government planning.

I am in doubt as to the value of some of the projects provided for and it is unwise to place recommendations to the Congress solely in the hands of the Engineer Corps of the Army in some cases and of the Department of Agriculture in other cases.

Coordination of all such public works involves a wider survey and the examination of more national problems than any one bureau or department is qualified for.

In these respects future legislation will be vitally important, in order to give to the Congress and to the country a complete picture which takes all factors into consideration.

For the coming year, however, I shall try to obtain this coordination by asking for complete consultation between all groups and government agencies affected. In this way the whole of the problem can be made more clear. I have, however, approved the bill because it accomplishes a number of good things, with, however, the reservation that its deficiencies should be corrected as early as possible.

The President was unsuccessful in this resolve, due largely to those congressional-Corps relations we have been discussing. The same obstacle prevents the President from consolidating important resources functions. Theodore Roose**velt** recommended to Congress in 1908 that responsibility for water development be centralized. Congress, expressing full confidence in the Corps of Engineers, failed to implement his recommendation. Herbert Hoover proposed to Congress in 1932 that the civil functions of the Corps of Engineers be transferred to the Department of Interior. His reorganization plan, submitted under the Economy Act of 1932, was roundly defeated in the House. The members of the House Committees on Flood Control and on Rivers and Harbors, Democrats and Republicans alike, opposed the reorganization. Franklin Roosevelt in 1937 proposed that Congress enact legislation permitting him to effect reorganizations within the executive branch. No agencies of Government were to be excluded. When in 1939 Congress finally- passed the Reorganization Bill authorizing the President to submit plans to Congress which would become law unless vetoed by both Houses of Congress within 60 days, the Corps of Engineers was one of a very few purely executive agencies placed beyond application of the legislation. Harry Truman in 1945 asked that Congress reenact reorganization legislation (it had lapsed some years previously) and that no agencies be exempted from its provisions. Congress did exempt some eight agencies, seven of them independent commissions or boards, and the eighth, the Corps of Engineers.

The Hoover Commission in 1949 proposed that the water resources functions of the Corps of Engineers and the Bureau of Reclamation be consolidated in a Water Development and Use Service and that this Service be organized within

the Department of Interior or, as three commissioners urged, within a new Department of Natural Resources. In proposing this consolidation, the Commission's task force on Natural Resources said:

Perhaps the most imposing argument against transferring the civil functions of the Corps of Engineers to another agency is found in the intense opposition with which any such proposal is likely to be met. There is no need to emphasize the powerful local and congressional support of the Corps .... The history of past reorganization efforts reveals the difficulties encountered when measures have been proposed involving my change whatsoever in the civil functions of the Army Engineers.

To implement this proposal and many others, President Harry Truman and former President Herbert Hoover urged Congress in 1949 to enact a general reorganization bill. The legislation was to be similar to earlier reorganization bills in that plans submitted by the President would become law unless vetoed by both Houses of Congress within 60 days. It was to differ from earlier legislation in that both Truman and Hoover insisted on a "clean bill," one containing no exemptions, and on a permanent bill, not one that expired within a few years.

The supporters of the Corps of Engineers, both in and out of Congress, objected strenuously to the proposed legislation. Herbert Hoover lashed out at these supporters and their demand for exemption for the Corps. Despite considerable opposition, the House passed the bill with no outright exemptions. The Senate, too, passed a "clean bill," no exemptions. But the Senate bill has a joker, one to which the House had to agree to get any bill at all. This joker provides that any reorganization plan submitted by the President shall become law unless vetoed by a constitutional majority of *one* House. This constitutes a major reverse for administrative reorganization; the bills of 1939 and 1945 had required veto by both Houses.

Why did the Senate insist on this change? Because the congressional supporters of the Corps of Engineers announced that they would forego outright **exemption for the Corps *only if* Congress would agree to a one-House veto.[6] They were sure that any proposed transfer of the Corps could not get through**

[6]The report of the Senate Committee on Expenditures contained the following:

"By far the largest number of witnesses appeared in behalf of the exemption of the civil functions of the Corps of Engineers, including representatives of valley improvement, flood control and development associations, chambers of commerce, and other State and civic organizations: 17 of the 25 witnesses appearing at the hearings, and **14** of the 23 resolutions and communications submitted for the record, were in support of such exemption. In addition, hundreds of telegrams and letters from **44** States and the District of Columbia were received by the committee, expressing opposition to granting any reorganization authority to the President which would permit the transfer of the civil functions of the Corps of Engineers to any other department or agency ....

"An amendment to exempt the civil functions of the Corps of Engineers, offered by the chairman [Senator McClellan], was defeated by a vote of 5 to 4. Several members of the committee indicated, however, that in voting against this exemption they reserved the right to favor such exemption should the Senate not approve the amendment providing for disapproval of reorganization plans by either the House of Representatives or the Senate." ***Senate Report*** 232, 81st Cong., 1st Sess., pp. 12-15, **17** (April 7, **1949).**

Congress under these conditions. And to make sure that future changes in the complexion of Congress might not alter this situation, they provided that the bill expire at the end of Truman's present term of office. The ease with which Congress, under this scheme, can defeat reorganization plans of the President has been demonstrated recently with grim reality.

Continued congressional opposition to Valley Authorities has been in part a consequence of the traditional legislative handling of water business. Congressional supporters of the Army Engineers, particularly members of the congressional committees to which the Engineers report, have been among the most violent opponents of Valley Authority legislation. They argue that the Engineers are doing a fine job and should not be displaced by independent corporate organizations.

It will be remembered that in 1937 President Roosevelt sent to Congress his famous message on regional authorities--the "8 little TVA's," as it came to be known. This much misunderstood proposal called for dividing the nation into eight regional areas for the purpose of developing integrated plans for resources development and management. At least in the early years, regional authorities with responsibilities broader than just planning would be set up or continued in only three areas. These were the TVA, the Columbia Valley Authority, and the Mississippi River Commission.

A careful reading of the hearings on this legislation before House and Senate committees reveals that almost all opponents of the bill, no matter whether their hostility to the legislation was inspired principally by opposition to hydroelectric power, by fear that the favored position of navigation interests in river development might be adversely affected, or by other causes, expressed complete confidence in the Engineer Department and an unwillingness to see any tampering with its duties in regard to rivers and harbors and flood control.

Significantly, the only Valley Authority legislation which has passed the Congress, that creating the TVA, was not handled by the committees which write navigation and flood control legislation, but rather in the Senate, by the Committee on Agriculture and Forestry, and in the House, by the Military Affairs Committee. These committees, particularly the Senate Committee on Agriculture, have been infinitely more sympathetic to Valley Authorities than the committees with which the Engineer Department has cooperated. Thus the fate of Valley Authority legislation, at least in so far as getting a sympathetic committee hearing is concerned, has depended in large part on the committee of reference.

The classic example is the legislation proposed by the President, and introduced by Senator Murray, to create a Missouri Valley Authority (S. 555, 79th cong., 1st Sess. [1945]). Senator Murray wished this bill referred to the Committee on Agriculture which had handled TVA legislation. The opponents of an MVA wished it referred to the Committee on Commerce, which then handled navigation and flood control. The Committee on Irrigation and Reclamation was also interested. Senator Murray lost, and this meant sudden death for the MVA. In an almost unprecedented action, the Senate adopted a resolu-

tion (Sen. Res. 97, 79th Cong. 1st Sess. [1945]) referring the bill to all three committees----*first*, for a period of 60 days to the Committee on Commerce with respect to navigation and flood control; second, for an equal period, to the Committee on Irrigation and Reclamation with respect to their competence; *last*, to the Committee on Agriculture. Within 60 days the Commerce Committee had reported back unfavorably; some five months later the Committee on Irrigation reported unfavorably. There was no necessity for the Agriculture Committee either to hold hearings or to make a report--the bill was dead.

Responsibility for TVA legislation was apparently shifted to the Committees on Public Works in the Congressional Reorganization of 1946. Thus, when President Truman's Columbia Valley Administration proposals were introduced, they were referred to these committees, the very ones which work 'most closely with the Corps. CVA legislation has received a most unsympathetic hearing on both sides of the Capitol. Indeed, with the exception of Senator Sparkman, an Alabama supporter of TVA, it is hard to find conscientious CVA proponents on either committee.

IV. THE PROPER ROLE OF CONGRESS

What function *should* Congress perform in water resources development and how ***should*** this function be organized? To answer these questions we should, perhaps, go back to the fundamental problem of legislative function. Here we shall develop two characteristic theoretical approaches to this problem. One seeks to determine the unique indispensable contribution the modern legislature can make to democracy. This approach defines function in the biological sense; it emphasizes the vital organic contribution of legislatures to modern government, rather than the relationship of the legislature to other branches of government activity. The other approach emphasizes just what the first would reject. It defines the legislative function largely in terms of the relations of legislatures to other organs of government.

Miss Elaine Tanner of Radcliffe College has completed recently an excellent survey of legislative theories.[7] Seeking a functional definition of the unique contributions of the legislature in the modern democratic state, Miss Tanner finds most current formulations inadequate, or rather in need of restatement. She suggests a two-fold function for the 20th century legislature. First, it can bring to modern government certain intangible qualities of the non-specialist, the insights and sensitivities of a non-technical collective mind. As its second contribution, the legislature occupies a critical place in a process that must welcome rational change. Capacity for change and for choice between alternatives is the institutionalized expression of individual freedom--of the "open mind." Capacity for change is the ultimate strength of democracy, the antithesis of totalitarian policy making. And it is the legislature which can "institutionalize the open mind." "It can make the Government see the obvious and do something about it, regardless of political, psychological, or other deterring

[7] **Elaine Tanner, *The Function of the Modern Legislature* (unpublished manuscript 1950, Radcliffe College)**.

conditions." By performing this function the legislature not only permits freedom but also government efficiency, for efficiency can be associated with ability to change, to choose alternatives, to see errors and correct them, to avoid bureaucratic narrowness and totalitarian closeness.

A second theoretical approach, developed with greatest insight in this country by Carl Friedrich,[8] emphasizes more directly the relation of the legislature to the bureaucracy. Bureaucracy is viewed as the very core of constitutional government in the sense that no modern government can long survive without an efficient administrative organization. Constitutionalism presupposes a functioning bureaucracy, for constitutionalism consists largely of efforts to subject the bureaucracy to popular influence and control. The legislature plays its distinctive role in the manner in which it holds the bureaucracy responsible and accountable. Parliamentary bodies "appear as integrating agencies through which the policy of the government and the claims of the various interested groups are expounded to the larger public with a view to discovering a suitable balance." Thus, in holding the bureaucracy responsible, legislative assemblies are not limited to legislation, investigation, and appropriation (in all of which, it must be remembered, they do not have exclusive jurisdiction); they participate also in popular education and propaganda.

On the basis of these two approaches, can we derive a proper water resource function for the Congress? From both the Tanner and Friedrich analyses we can conclude that Congress should be concerned with important national water policies. It is when dealing with major issues of policy, not with survey reports on individual projects, that the "unspecialized" and the "open" mind-and thus the Congress representing this mind collectively-can be most effective. If the Congress is to hold the bureaucracy accountable, then it must adopt certain standards or guides, and these standards are just what is involved in legislation setting national water policies rather than legislation concerned with projects only. Further, unless Congress focuses on the major policy issues, it cannot perform its educative function. The people of the United States cannot be interested in whether or not Mill Creek, Virginia, is improved, nor even in whether Arizona or California should be allotted the greater share of the waters of the Colorado River. But they can be aroused on national policy issues such as the prevention of speculation and monopoly in benefits derived from Federal improvements.

Both analyses indicate also the desirability of holding the executive branch of government clearly responsible for presenting to the Congress well-balanced legislative proposals which focus on major issues. In this way the legislature can debate, adopt, reject, or amend them. The "open mind," if it is going to effect change, must have something to change, must have a standard. And an important part of Friedrich's doctrine of bureaucracy and constitutionalism relates to the professional. obligations of the bureaucracy, involving in this

[8] See especially his *Constitutional Government and Democracy* (Boston, 1941). A new and revised edition of this excellent work is now in press.

ease a **clear** responsibility for submitting to the legislature competent policy proposals.

Having agreed that Congress should be concerned with important matters of policy, we must attempt to determine whether Congress should **limit itself** largely to this concern; whether, in other words, it should back out entirely from the area of authorizing individual projects----from the biennial omnibus rivers and harbors and flood control bills. Keeping in mind both the functions for which the legislature is best equipped and the acknowledged necessity for holding the bureaucracy in close check, an ideal solution for authorization would appear to be this. Congress should pass a basic law setting out in some detail the standards to be met by any proposed water project desirable of development. The executive water development agency should then be authorized to undertake any investigation, not having to rely on Congress to authorize each survey, and to approve for construction any project that meets the standards of the. basic law. For any project not falling clearly within the standards, but highly desirable in the eyes of the executive agency, a recommendation for special authorization should be submitted to the Congress. Congress would always have the authority to disapprove by legislation any project approved by the agency under this general authorization.

The basic law should further set forth criteria for establishing priorities among approved projects. The manner in which the agency applies its appropriations against project priorities, established in accordance with standards of the basic law, would, of course, be reviewed yearly by the Appropriations Committees. Finally, Congress should insist that the basic law be reconsidered periodically, and that the executive agency adopt a continuing program for reexamining, on the basis of experience, the operation of the law and recommending to Congress revisions of standards.

This proposal involves a more complete transfer of responsibility for adjustment of group interests than that in current practice. The proposal is made, however, in full view of both the undesirable consequences we have found to result from the existing situation and the conclusion reached earlier that an **important** function of the legislature is to integrate and coordinate the conflicting claims and interests of the government and various interest groups. With respect to the latter, it has never been said that adjustment is exclusively a legislative responsibility. To the contrary, adjustment of group interests occurs throughout the administrative and legislative processes. In this instance, the integration and coordination of group interest which is required in setting the basic statute will be a responsibility of the Congress; that required for developing individual projects, a responsibility of the executive agency.

This proposal for very broad delegation of responsibility for interest group adjustment should not aggravate the already bad consequences we have noted from a more limited delegation. On the contrary, it should bring improvements in the existing situation. The very fact that, within the limits of standards set in the basic act, full, rather than incomplete, responsibility would be transferred should remove much of the pressure on Congress. Thus, for example,

the technique of the review resolution would not be available. The executive agency would no longer look to Congress for the authorization of specific investigations. There would be no hearings on omnibus authorization bills at which interested members of Congress and the representative of the Chief of Engineers form a team in support of projects.

To be sure, individual members still would seek approval for investigations and projects in their districts. But they would be more on their own; they would not be supported in the same way by congressional committees. And the members of the committees themselves would not continue to occupy the same highly preferred positions they have now with respect to the conduct of the water agency.

This proposal is not new. The Reclamation Act provides similar machinery. But this machinery has run into difficulties in the last few years. The standards of the Act are not adequate; and the parallel existence of a vastly different process for authorizing Engineer Department projects has caused untold difficulties for Reclamation. If the Cooke Commission, as promised, comes up with an adequate set of standards, and if the process of approving multiple purpose water resource developments is made uniform (as it should be for all projects, no matter who constructs them), then the proposed method of authorization can be effective.

A number of other revisions in legislative organization and procedure might, of course, be mentioned. But space permits the mention of only one relating to committees. Jurisdiction over major water resources programs is split in both Houses of Congress between two committeesD--those having supervision over the Corps of Engineers and other public works and those concerned with the Bureau of Reclamation and other programs of the Department of the Interior. This is a major source of difficulty and unless remedied may well preclude any significant improvement in the conduct by Congress of its water business.

Finally, a great many of the difficulties in water legislation today are a consequence of, or in an important way related to, the division of water development responsibilities in the executive branch between the Corps of Engineers, the Department of Interior, and other agencies. From the point of view of Congress, therefore, significant improvements in the legislative handling of water resources may well be impossible without executive reorganization.